

Gaston County, NC
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Draft Zoning Ordinance

Gaston County Wellhead Protection Ordinance
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Gaston County Well Protection Ordinance

ARTICLE 1: General provisions

Section 1: Short Title

This Ordinance shall be known and may be cited as the Gaston County Wellhead Protection Ordinance.

Section 2: Purpose

The purpose of this Ordinance is to safeguard the public health, safety, and welfare by protecting the public groundwater supply through regulation of land uses within specifically delineated areas in and around the community's existing wells and wellfields.

Section 3: Authority

(a) This Ordinance is adopted by Gaston County pursuant to the authority contained in N.C.G.S. ° 153A-121.

(b) Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, the Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Effective~ Date

The provisions in this Ordinance were originally adopted and became effective on

4/1/91

Section 5: No Use or Sale of Land or Buildings Except in Conformity with Ordinance Provisions

(a) No person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy or sale of land or buildings under his control except in accordance with all of the applicable provisions of this Ordinance.

(b) For purposes of this Section, the use or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

Section 6: Fees

Reasonable fees sufficient to cover the cost of administration, inspection, publication of notice and similar matters may be charged to applicants as needed. The amount of the fees charged shall be established by resolution of the County Board of Commissioners filed in the office the County Clerk.

Section 7: Severability

It is hereby declared to be the intention of the County that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, 'and if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance since the same would have been enacted without the incorporation into this Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause or phrase.

Section 8: COMPUTATION of time

(a) Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday~ or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded.

(b) Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall be added to the prescribed period.

Section 9 Determination~of Applicability

It shall be the responsibility of any person owning real property or owning and/or operating a site, business, industry, facility, or operation located within the subject area of this Ordinance to make a determination of the applicability of the provisions of this Ordinance as it pertains to the property and/or site, business, industry, facility or activity under that person's ownership or

operation; failure to do so shall not excuse any violations of the provisions of this ordinance.

Section 10: Conflict with Other Provisions

In the event of any provision, standard or requirement of this Ordinance is found to be in conflict with any provision of any other Ordinance or Code of the County, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the County shall prevail.

Section 11: Miscellaneous

(a) As used in this Ordinance, words importing the masculine gender include the feminine and neuter.

(b) Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.

ARTICLE 2: BASIC DEFINITIONS

Section 12: Definitions

Certain words in this Ordinance are defined for the purpose of this Ordinance, as follows, unless the contrary clearly appears from the context:

Accessory use: An "accessory use is a structure or use which:

(a) Is clearly incidental to and customarily found in connection with a principal building or use;

(b) Is subordinate to and serves a principal building or a principal use;

Is subordinate in area, extent or purpose to the principal building or principal use served;

(d) Contributes to the comfort, convenience or necessity of occupants, business or industry in the principal building or principal use served; and

(e) Is located on the same lot as the principal building or use served.

Administrator: The Environmental Health Administrator, Gaston County Health Department.

Aggrieved Person: A person directly affected by a decision made pursuant to the provisions of this Ordinance by the Gaston County Board of Health or by the Administrator/Health Director because of that person's status as owner, operator, or occupier of property which is the subject of

the decision; or a person directly affected by a decision made pursuant to the provisions of this Ordinance by the Gaston County Board of Health or by the Administrator/Health Director because of that person's status as consumer of a public water supply well, the safety of which the consumer believes is being threatened by the decision.

Aquifer: A groundwater bearing geologic formation, or formations, that contain enough saturated permeable material to yield significant quantities of water to wells and/or springs.

Beneath the surface of the Ground: Beneath the ground surface or otherwise covered with earthen materials.

Consumptive Use: "Consumptive use" with respect to heating oil means consumed on the premises.

Disposal: The discharge, deposit, injection, dumping, spilling, leaking or placing of any substance into or on any land so that the substance or any constituent part of the substance may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Dwelling~ Unit: One or more rooms physically arranged as to create an independent housekeeping establishment with separate facilities for cooking, sleeping, and toilet for the occupancy by one family.

Farm Tank: As defined in 15 N.C.A.C. 2N .0203, the term "farm tank" means a tank located on farm property devoted to the production of crops or raising animals, including fish, and associated residences and improvements. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

Garbage: All putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

Groundwater: Water in the saturated zone that is under a pressure equal to or greater than atmospheric pressure.

Hazardous Waste: As defined in N.C.G.S. § 130A-290(8), the term "hazardous waste" means a solid waste (see definition of "solid waste" infra), or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

(a) cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Hazardous Waste Facility: A facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste, as defined in N.C.G.S. ° 130A-290(9).

Hazardous Waste Management: The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes, as defined in N.C.G.S ° 130A-290(12).

Heating~ Oil: Petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.5-heavy and No. -6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces, as defined in 15

N.C.A.C. 2N .0203.

Impervious Surface: Material on the ground that does not allow significant amounts of surface water to penetrate into the soil.

Land Application Disposal ~System: A waste disposal method which distributes waste on the ground surface.

Landfill: A disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility, as defined in N.C.G.S. ° 130A-290(16).

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or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (a) cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
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Hazardous Waste facility: A facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste, as defined in N.C.G.S. ° 130A-290(9).

Hazardous Waste Management: The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes, as defined in N.C.G.S. ° 130A-290(12).

Heating~ Oil: Petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.5-heavy and No. -6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces, as defined in 15

N.C.A.C. 2N .0203.

Impervious Surface: Material on the ground that does not allow significant amounts of surface water to penetrate into the soil.

Land Application Disposal ~System: A waste disposal method which distributes waste on

the ground surface.

Landfill~II: A disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility, as defined in N.C.G.S. °

130A-290(16).

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Lot: A parcel of land now or hereafter laid out and occupied by one building and the accessory buildings or uses customarily or necessarily incident to it.

Potable Water: Water that is intended for drinking, culinary and domestic purposes, subject to compliance with County, State, or federal drinking water standards.

Public or Community Sewage System: A single system of sewage collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility as defined in N.C.G.S. °

130A-334(8).

Public Water Supply System: A system that serves 15 or more service connections or which regularly serves an average of 25 or more individuals daily, as defined in N.C.G.S. °

130A-313(10).

Regulated Substances: Hazardous substances as defined in Amendments and Reauthorization Act (SARA) at 42 U.S.C. 9601(14) regulated substances shall not include hazardous air pollutants 42 U.S.C. 9601(14). Hazardous substances shall include:

(a) substances designated under the Federal Water Pollution Control Act at 33 U.S.C. 1321(b)(2)(a) and 33 U.S.C. 1317(a);

(b) substances designated under Section 9602 of SARA;

substances having characteristics listed under Section 3001 of the Solid Waste Disposal Act at 42 U.S.C. 6921;

(d) substances designated under Section 2606 of the Toxic Substances Control Act.

Refuse: All nonputrescible waste.

Residential Tank: A tank located on property used primarily for dwelling purposes, as defined in 15 N.C.A.C. 2N .0203.

the Superfund except that referenced in

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agricultural operations, and from community activities, as defined in part in

N.C.G.S. ° 130A-290(35).

Solid Waste Management: Purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste, as defined in N.C.G.S. °

130A-290(38).

Solid Waste Management Facility: Land, personnel and equipment used in the management of solid waste, as defined in N.C.G.S. ° 130A-290(39).

Storage: The containment of any substance, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

Surface Impoundment: A natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well, as defined in 15A N.C.A.C. 2N .0203.

Underground Storage Tank or UST: Any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of UST regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 16A, et seq.), or
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(2) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(3) which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;

(e) surface impoundment, pit, pond, or lagoon;

- (f) storm-water or wastewater collection system;
- (g) flow-through process tank;
- (h) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

UST Regulated Substance: As defined in 15 N.C.A.C. 2N .0203, for purposes of the definition of Underground Storage Tank, the term "regulated substance" means:

- (a) any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, and
- (b) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" with regard to the definition of Underground Storage Tank includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor

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fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Well: Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is to conduct groundwater from a source bed to the surface by pumping, natural flow, or other method.

Well field: A tract of land that contains one or more wells for supplying water.

ARTICLE 3: DISTRICTS AND DISTRICT MAP

~ 13 Use ~ ~ ~

Certain areas of the County are hereby delineated into the following districts:

- (a) _____
Wellhead Protection Buffer

Wellhead Protection Buffers are established to protect and ensure the safety and potability of the County's groundwater supply to public water wells. Wellhead Protection Buffers are comprised of those areas which, because of their proximity to the public supply water well, are sensitive

areas critical to the protection of the public water supply, and which require insulation from incompatible land uses.

(b) Wellhead Protection District

Wellhead Protection Districts are established to protect and ensure the safety and potability of the County's groundwater supply to public water wells. Wellhead Protection Districts are comprised of those areas which are critical to the protection of the County's groundwater supplies, and require insulation from incompatible land uses. These areas include the surface and

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subsurface area surrounding the water wells, supplying the public water system, through which contaminants are reasonably likely to move toward and reach such water wells.

Well field Protection District

Well field Protection Districts are established to protect and ensure the safety and potability of the County's groundwater supply to public water supply wells. The Well field Protection Districts are comprised of those areas surrounding and contiguous to the Wellhead Protection Districts, and which serve as recharge areas for the County's public water supply wells. Recharge areas are critical to the potable groundwater supply and need protection from incompatible land uses. These areas include the surface and subsurface area surrounding the wellhead through which contaminants are reasonably likely to move toward and reach such Well field.

Section 14: Methodology of District Delineation

The above-referenced districts shall surround every public water supply well in Gaston County. Areas which do not fall within one of these districts are not affected by the restrictions imposed by this Ordinance. The location of every public water supply well is shown on the District map.

The ground-water recharge rate for the area in which each well is located shall be calculated based on land use (forested, farmland, or urban) and on the infiltration characteristics of the regolith. The following criteria shall be used in estimating recharge rates:

(1) In rural areas (forests and farmland):

Hydrogeologic unit No. 1 - - 400,000 gpd/sq. mi. Hydrogeologic units 2, 3, and 4 -- 300,000 gpd/sq. mi.

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(2) In urban areas:

half the above rates.

The average daily rate that water is withdrawn from each well shall be determined as follows: the product of the pumping rate in gallons per minute multiplied by the average number of minutes the wells are pumped each day divided by 1,440 (the number of minutes in a day) results in the average daily pumping rate in gallons per minute. Using the average daily pumping rate and the recharge rate, the length ~ of the "contributing area ellipse" is determined from Graph A, Appendix , showing the relation between pumping rate, recharge rate, and length of long axis of contributing area ellipse. The "contributing area ellipse" is drawn with the long axis equal to "a" and the short axis equal to "a/2." The long axis of the ellipse shall be roughly parallel to the foliation lines shown on the map in Appendix

Section 15: District~ Map

(a) Identification and Definition

The map entitled "Wellhead Protection Ordinance Map of Gaston County, North Carolina," dated _____ is hereby declared to be the Wellhead Protection Ordinance Map of the County. All changes in the Wellhead Protection Ordinance Map which may be hereafter made by ordinance shall be identified by inserting upon the original tracing a record of each change together with the date thereof.

The Districts designated on the "Wellhead Protection Ordinance Map of Gaston County, North Carolina" which is on file in the Gaston County Health Department, Office of the Environmental Health Administrator, and which is hereby to be a part of this Ordinance, are hereby established. declared The

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designations, lines, figures, letters and symbols shown on such Map are hereby declared to be part thereof.

(b) Dissemination

In order to supply to the citizens and officials necessary information pertaining to the District Map and the location of the district boundaries, a blueprint, white print, or other suitable copy of the map shall be kept by the Gaston County Health Department and immediately upon the passage of any amendment to or change of the map and the location of the boundary lines, the County Board of Health shall forthwith add the amendments or changes to this copy of the District Map; to the end that it shall be an up-to-date record of the wellhead protection districts of the County and shall be an accurate public record for reference for all those desiring to know how a particular area or parcel of land within the County is affected by this Ordinance.

ARTICLE 4:USE DISTRICT REGULATIONS

Section 16 Conformity to Regulations

In all districts, land and buildings shall be used and buildings when constructed, altered, or extended, shall be arranged, intended and designed to be used in accordance with the terms of this Ordinance.

Section 17~ Wellhead Protection Buffer Use Requirements

In accordance with 10 N.C.A.C. 10D .0803, a protective area with a 100-foot radius shall surround each public water supply well. In Gaston County, this shall be known as the "Wellhead Protection Buffer." In order to carry out the intent of 10 N.C.A.C. 10D .0803 to the fullest extent this Ordinance hereby restricts all land within the Wellhead Protection Buffer to open space

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19: Well field Protection District Use~Requirements

Within each Well field Protection District the following uses and structures which pose known threats of contamination of groundwater are specifically prohibited, except in accordance with Section 20. The list of prohibited uses and structures should be read in close conjunction with the definitions of terms set forth in Section 12.

- (1) Landfills;
- (2) Abandoned and Active Hazardous Waste Sites and Management Facilities;
- (3) Solid Waste Management Facilities, including Surface Impoundments and Waste Lagoons;
- (4) Land Application Disposal Systems;
- (5) Storage or Application of Restricted Use Pesticides;
- (6) Septic Tanks unless used only for domestic waste and is pumped out at least once every five years;
- (7) Underground Storage Tanks;
- (8) Animal Feed Lots;
- (9) Use or Production of Regulated Substances in Industrial, Processing or Manufacturing, or Commercial Operations;

Impervious Surfaces of greater than 10% of the total lot size;

Anything that is dangerous or prejudicial to the public health via the public wellwater supply system.

_____ No Well field Protection District Prohibited Uses and Structures to Continue in any District Without an Approved Operating, Monitoring and Amortization Plan
(10)

(11)
Section 20:

All uses and structures specifically prohibited in Section 19 may continue in any of the districts beyond the effective date of this Ordinance only if, within ninety (90) days after the effective date of this Ordinance the Gaston County Board of Health approves an Operating, Monitoring, and Amortization Plan for each prohibited use or structure.

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ARTICLE 5: PLAN APPROVAL

Section 21: Requirements of an Operating, Monitoring and Amortization Plan

The following elements of an Operation, Monitoring, and Amortization Plan (or "Plan") are required, at a minimum, for approval by the County Board of Health

(a) _____
General Information

(1) Name, title, and address of owner of the land on which the prohibited use or structure is located.

(2) Name, title, and address of operator, authorized agent, or other responsible person if different from subsection (a) (1).

(3) Name of the business

(4) Address of the prohibited use or structure

(5) Type of facility, operation, or site

(6) Size of the prohibited use or structure, including, where applicable, lot acreage; square footage of any buildings; number of employees; volume of business conducted during the fiscal year or projected volume for current fiscal year; etc.

(b) Operating/Performance Standards

(1) The Plan must specify under what standards the prohibited operation facility, or site will be operated or performed under. These standards must ensure that all possible efforts are made to reduce the likelihood of contamination of the groundwater supply.

(2) If any state or federally promulgated environmental protection standards exist for a particular site, industry,

(d)

business, facility, or operation, then the Plan must specify what those standards are, and how they will be implemented.

(3) If no state or federally promulgated standards exist, or in addition to such standards, the Plan must indicate what the

most current Best Management Practices (BMP) are for that

particular site, industry, business, facility, or operation, and how those Best Management Practices will be implemented.

Monitoring~ Provisions

(1) If state or federal laws, rules, or regulations require groundwater monitoring by a particular site, industry,

business, facility, or operation, then the Plan must specify what those requirements are, and how they will be

implemented.

(2) If no state or federal laws, rules, or regulations require groundwater monitoring by a particular site, industry,

business, facility, or operation, then the Plan must specify by whom, by what method, where, and how frequently the

groundwater under the property will be monitored. Amortization Schedule

(1) Subject to Subsection (d)(4), the Plan must specify how long the use, facility, or operation will continue after the effective date of this Ordinance (the "amortization period"). In no case shall the amortization period exceed five years after the effective date of this Ordinance. The amortization schedule must further specify whether the use, facility or operation will be phased out gradually, and if

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so, by what degrees, and the projected dates of any scaling-down to take place over the amortization period.

(2) The amortization schedule must be a reasonable one, but in no event shall the entire amortization period, beginning from the effective date of this Ordinance, be longer than five years. Whether the terms of the amortization schedule are reasonable will be determined in terms of the capacity of the well, severity of the risk of contamination of the groundwater from

continued use of the site, industry, business, facility, or operation, balanced with the burden on the owner/operator in ceasing its active use, and the value of continued active use to the community, including such factors as local employment, payroll, community enhancement, etc.

(3) The Plan must specify what the owner intends to do with the property upon completion of the amortization period. Closure of the site, industry, business, facility, or operation must be undertaken so that no threat to the groundwater supply will continue after closure has been completed.

(4) No amortization schedule is required for septic tanks or impervious surfaces located within Wellhead Protection Districts or Well field Protection Districts. Provided that the other requirements of this Section are met, these prohibited uses will be allowed to continue indefinitely, although no future expansion will be allowed.

(e)

(f)

20

Performance Bond

The owner/operator of any prohibited use or structure is required to engage an accredited Performance Bondsman to ensure complete compliance with the terms of the approved Operation, Monitoring and Amortization Plan. The Plan must specify the name and address of the Bondsman, as well as the amount of the insurance obtained. Other Requirements

E

The Administrator/Health Director may impose additional requirements if she believes further protection of the County's groundwater supply to the public well systems is warranted, including groundwater monitoring beyond the amortization period specified in the Plan. Factors which shall be considered by the County Board of Health in deciding to impose additional requirements include, but are not limited to, the toxicity of the substance; the amount of the substance; proximity of the condition to the well; soil conditions, topography; and other factors pointing to the degree of risk posed to the public water supply.

Section 22 Standard of Review for Approval of Operating~ Monitoring and Amortization Plans

In all instances, in addition to the requirements specified in Section 21, the County Board of Health and the Administrator/Health Director shall review Plans submitted for approval in terms of the greatest protection feasible for the groundwater supply to the County's public well systems.

Section 23: Who May Submit an Application for Approval of an Operating. Monitoring and Amortization Plan

(a) Applications for approval of Operating, Monitoring, and Amortization Plans will be accepted only from persons having the legal authority to take action in accordance with the approved

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Plan approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property or their authorized agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary approval under this Ordinance, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).

(b) The Administrator/Health Director may require an applicant to submit evidence of his authority to submit the application in Subsection (a) whenever there appears to be a reasonable basis for questioning this authority.

Section 24 Applications to be Complete

a) All applications for approval of Operating, Monitoring, Amortization Plans must be complete before the Administrator/Health Director is required to consider the application.

(b) An application is complete when it contains all of the information that is necessary for the Administrator/Health Director to decide whether or not the site, facility, or operation, if conducted or used as proposed in the Operating, Monitoring, and Amortization Plan will comply with all of the requirements and carry out the purposes of this Ordinance.

Section 25 Submitting Operating Monitoring and Amortization Plans for Approval

a) An application for approval of an Operating, Monitoring, and amortization Plans shall be submitted to the Administrator/Director of the Gaston County Health Department by filing eight copies of the application with the Administrator/Director.

(b) Subject to Subsection (c), the Administrator/Director of the Health Department shall issue the requested approval unless she concludes, based on the information submitted at the

hearing, that the application is incomplete, or if conducted or used as proposed in the Operating, Monitoring and Amortization Plan, the site, facility or operation will not comply with one or more requirements of this Ordinance, or

Even if the Administrator/Director of the Health Department finds that the application complies with all other provisions of this Ordinance, she may still deny approval if she concludes, based on information submitted in the application or at the hearing, that if conducted or used as proposed, the site, facility, or operation, more probably than not will materially endanger the safety and potability of the County's groundwater supply to public water wells.

Section 26 Burden of Presenting Evidence: Burden of Persuasion

(a) The burden of presenting a complete application for approval of an Operating, Monitoring, and Amortization Plan to the Administrator/Director of the Health Department shall be upon the applicant.. The burden of persuasion on the issue of whether the site, facility or operation if conducted or used as proposed, will comply with the requirements of this Ordinance remains at all times on the applicant.

Section 27: Applications to be Processed Expeditiously

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary burdens on the appellant or applicant, the County shall make every reasonable effort to process appeals and approval applications as expeditiously as possible, consistent with the need to ensure that all sites, facilities, and operations conform to the requirements of this Ordinance.

ARTICLE 6: HEARING PROCEDURES FOR APPLICATIONS AND APPEALS

Section 28 Hearing Required on Applications for Approval of Operating Monitoring and Amortization Plans

(a) Before making a decision on the application for approval of an Operating, Monitoring and Amortization Plan, the Administrator/Health Director shall hold a public hearing on the application within 45 days after it is found to be complete in accordance with Section 24.

(b) Subject to Subsection (c), the hearing shall be open to the public and all persons interested in the outcome of the application hearing shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

The Administrator/Health Director may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(d) The Administrator/Health Director may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is

made.

Section 29 Notice of Hearing on Applications for approval of Operating Monitoring and Amortization Plans

The Administrator/Health Director shall give notice of any hearing required by Section 28 as follows:

- (1) Notice shall be given to the applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than 10 days before the hearing.
- (2) Notice shall be given to neighboring property owners by mailing a written notice not later than 10 days before the hearing to those persons who have listed for taxation real property any portion of which is located within 150 feet of the lot that is the subject of the application. Notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the application. Such signs shall be posted not less than seven days prior to the hearing.
- (3) Notice shall be given to the general public by publishing a notice one time in a newspaper having general circulation in the county not less than seven nor more than fifteen days prior to the hearing.
- (4) The notice required by this Section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application, and give a brief description of the type of site, industry, business, facility, or operation that is the subject of the application.

Section 30 Modification of Application at Hearing

- (a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Gaston County Board of Health, or the Administrator/Health Director, the applicant may agree to modify his application, including the amortization schedule, monitoring specifications or operating standards included in the submitted Operating, Monitoring and Amortization Plans.
- (b) Unless such modifications are so substantial or extensive that the Administrator/Health Director cannot reasonably be expected to perceive the nature and impact of the proposed changes without revisions before it, the Administrator/Health Director may approve the application with the stipulation that final approval of the Operating, Monitoring, and Amortization Plan will not be issued until the Plan reflects the agreed-upon changes and is resubmitted to the Administrator/Health Director.

Section 31: Evidence at Hearings on Applications

- (a) All persons who intend to present evidence to the Administrator/Health Director at the

application hearing, rather than arguments only, shall be sworn.

(b) All findings of fact shall be based upon reliable evidence. All conclusions necessary to the issuance or denial of the requested appeal (crucial findings) shall be based upon the findings of fact. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

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Section 32- Written Decision

(a) Any decision made by the Administrator/Health Director regarding approval or disapproval of an Operating, Monitoring, and Amortization Plan shall be reduced to writing and served upon the applicant and all other persons who make a written request for a copy, and shall be filed in the Office of the Gaston County Health Department, and shall be open to public inspection.

(b) In addition to a statement of the Administrator's/Health Director's decision regarding the application and any other information deemed appropriate, the written decision shall state the Administrator's/Health Director's findings and conclusions, as well as supporting reasons or facts.

Section 33 Action Taken Pending Appeal on an Application

If, in accordance with the foregoing sections, the Administrator/Health Director does not issue approval of an Operating, Monitoring, and Amortization Plan, or if, upon issuing approval of an Operating, Monitoring, and Amortization Plan an aggrieved party wishes to appeal the decision in accordance with Section 34, the Administrator/Health Director shall determine whether or not the site, industry, business, facility, or operation in question shall be allowed to continue pending the appeal

(b) The decision of whether or not the site, industry, business, facility, or operation shall be allowed to continue pending appeal so that no undue risk to the county's groundwater public well system will occur. Factors which shall be by the Administrator/Health Director include, but are not limited to, the toxicity of the substance; the amount of the substance; proximity of the condition to the well; soil conditions; topography; and other factors pointing to the degree of risk posed to the public water supply.

Section 34: Hearing Required on Appeals

(a) An appeal from any decision or order of the Administrator/Health Director concerning the approval or disapproval of an Operating, Monitoring and Amortization Plan; enforcement of any provision of this Ordinance; or the imposition of any penalty for violation of the same may be taken by any person aggrieved thereby within thirty days from the rendering of the decision or service of the order

(b) An appeal shall be taken by filing written notice of appeal with the Administrator/ Director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the Administrator/Health Director shall, within five working days, transmit to the Gaston County Board of Health the notice of appeal and the papers and materials upon which the challenged action was taken.

The Gaston County Board of Health shall hold a hearing within 90 days of the receipt of the notice of appeal. On appeal, the Gaston County Board of Health shall have authority to affirm, modify or reverse the challenged action.

(d) Subject to Subsection (e), the hearing shall be open to the public and all persons interested in the outcome of the appeal shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(e) The Gaston County Board of Health may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(f) The hearing board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No notice of a continued hearing is required unless a period weeks or more elapses between hearing dates.

(g) A person who wishes to contest a decision of the Gaston County Board of Health under this Section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the Board. The scope of review in district court shall be the same as in N.C.G.S. § 150B-51.

Section 35: Notice of Hearing an Appeals

The Administrator/Health Director shall give notice of and hearing required by Section 34 as follows:

(1) Notice shall be given to the aggrieved person and any other person who makes a written request for such notice by mailing to such persons a written notice not later than 10 days before the hearing.

(2) Notice shall be given to neighboring property owners by mailing a written notice not later than 10 days before the hearing to those persons who have listed for taxation real property any portion of which is located within 150 feet of the lot that is the subject of the appeal. Notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the appeal. Such signs shall be posted not less than seven days prior to the hearing.

(3) Notice shall be given to the general public by publishing a notice one time in a newspaper having general circulation in the County not less than seven nor more than fifteen days prior to the hearing.

(4) The notice required by this Section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the appeal, and give a brief description of the type of site, industry, business, facility, or operation that is the subject of the appeal.

Seciton 36: Evidence at Hearings on Appeals

(a) All persons who intend to present evidence to the Board of Health at the appeals hearing, rather than arguments only, shall be sworn.

(b) All findings and conclusions necessary to the issuance or denial of the requested appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

Section 37. Written Decision

(a) Any decision made by the Gaston County Board of Health regarding an appeal shall be reduced to writing and served upon the appellant and all other persons who make a written request copy, and shall be filed in the Office of the Gaston County Department, and shall be open to public inspection.

(b) In addition to a statement of the Gaston County Board of Health's decision regarding the appeal and any other information deemed appropriate, the written decision shall state the Board of Health's findings and conclusions, as well as supporting reasons or facts.

Seciton 38 Recordings of Hearings

(a) A tape recording shall be made of all hearings required by Sections 28 and 34' and such recordings shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

(b) Whenever practicable, all~documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the County for at least two years.

ARTICLE 7: ENFORCEMENT AND REVIEW

Section 39: Complaints Regarding Violations

Whenever the Health Director/Administrator receives a written, signed complaint alleging a violation of this Ordinance, she shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.
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Section 40: Persons Liable

The owner, tenant, or occupant of any building or land or part thereof and any engineer, builder, contractor, agent, operator, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

Section 41: Procedures Upon Discovery of Violation

(a) If the Health Director/Administrator finds that any provision of this Ordinance is being violated, she shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including an order of immediate cessation of the active use of the site, facility, or operation. Additional written notices may be sent at the Health Director/Administrator's discretion.

(b) The final written notice (and the initial written notice may be the final notice) shall state what action the Administrator/Health Director intends to take if the violation is not corrected and shall advise that the Administrator/Health Director's decision or order may be appealed to the Gaston County Board of Health in accordance with Section 34.

Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, giving special consideration to the safety and potability of the county's groundwater supply, the Administrator/Health Director may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 42.

Section 42 Penalties and Remedies for Violations

(a) Pursuant to N.C.G.S. § 153A-123, violations of the provisions of this Ordinance or failure to comply with any of its requirements, shall constitute a misdemeanor, punishable by a fine of up to _____ dollars (\$~) or a maximum of _____ (____) days imprisonment, or both.

(b) Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements shall also subject the offender to a civil penalty of - dollars _____. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered by the County in a civil action in the nature of debt.

Any act not in accordance with an approved Operating, Monitoring, and Amortization Plan may be rectified by the County, with costs charged against the accredited Performance Bondsman named in the Plan.

(d) This Ordinance may also be enforced by any other appropriate legal action, including but not limited to, administrative action, orders from the County Board of Health for immediate cessation of operations if warranted, and requests for temporary and permanent injunctions from

a court of competent jurisdiction.

(e) Neither this Ordinance nor any of its provisions shall be construed to impair or limit in any way the power of the County to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this Ordinance by criminal process as authorized by North Carolina General Statutes Section 14-4 and the enforcement of any remedy or remedies provided herein shall not prevent the enforcement of any remedy or remedies provided herein or in any other ordinance or laws.

(f) Each day that any violation continues after notification by the Administrator/Health Director that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this Section.

(g) Any one, all, or any combination of the foregoing remedies may be used to enforce this Ordinance.

Revocation of Approval of Operating, Monitoring and Amortization Plans

(a) Approval of submitted Operating, Monitoring and Amortization Plans may be revoked by the Administrator/Health Director (in accordance with the provisions of this Section) if the approval recipient fails to operate, use, or maintain the site, facility or operation in accordance with the Plan submitted, the requirements of this Ordinance, or any additional requirements imposed by law.

(b) Before approval may be revoked, all of the notice and hearing and other requirements of this Ordinance shall be complied with. The Notice shall inform the approval recipient of the alleged grounds for the revocation.

(1) The burden of presenting evidence sufficient to authorize the approval-issuing authority to conclude that approval should be revoked for any of the reasons set forth in Subsection (a) shall be on the party advocating that position. The burden of persuasion shall also be on that party

(2) A motion to revoke approval shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

Subject to Subsection (d), before approval of a submitted Plan may be revoked, the Administrator/Health Director shall give the permit recipient 10 days notice of intent to revoke the Plan approval and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the approval is revoked, the Administrator shall provide to the applicant a written statement of the decision and the reasons thereof.

(d) Notwithstanding Subsection (c), if the Administrator/Health Director, in her discretion, finds that any site, facility, or operation is being used or conducted in a manner which poses a

significant threat to the safety and potability of the community's groundwater supply, the Administrator/Health Director may order immediate cessation of all activity on the property, pending a hearing and appeals process.

(e) No person may continue to make use of land or buildings in the manner authorized by approval of an Operating, Monitoring and Amortization Plan after such approval has been revoked in accordance with this Section pending appeal of the decision to the Gaston County Board of Health.